

VIRGINIA:

IN THE DEPARTMENT OF ENVIROMENTAL QUALITY

**IN RE: Zee Investments, LLC
 Main Street Truck Stop Underground Storage Tanks
 Facility ID No. 3022559**

ORDER

This cause came to be heard on June 7, 2019, in the Department of Environmental Quality's Northern Regional Office, in Woodbridge, Virginia.

Pursuant to § 10.1-1186 of the Code of Virginia, the Director of the Department of Environmental Quality ("DEQ") has the authority to issue special orders that may include injunctive relief and civil penalties.

I have reviewed the Record, Exhibits, and the Presiding Officer's Recommended Findings of Fact and Conclusions of Law in the above-referenced matter. Accordingly, I adopt the attached Findings of Fact and Conclusions of Law and incorporate them into this Order.

Pursuant to my authority under Va. Code § 10.1-1186, I order Zee Investments, LLC to comply with (1) the State Water Control Law, Va. Code § 62.1-44.2 et seq., and (2) the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 et seq.

Specifically, I order Zee Investments, LLC to complete the following with respect to the Underground Storage Tanks ("USTs") at the Main Street Truck Stop facility, located at 43083 John Mosby Highway in Chantilly, Virginia (the "Facility"):

1. Within 90 days of the date of this Order, submit to DEQ documentation of piping release detection satisfying the requirements of 9 VAC 25-580-140 and 9 VAC 25-580-170.
2. Conduct release investigation, reporting, confirmation steps, and mitigation documentation for PC# 2019-3132 as follows:
 - a. Within 90 days of the date of this Order, take any necessary initial abatement measures to mitigate the effects of the release (eliminate the source, remove free-phase petroleum contamination, remove limited quantities of petroleum saturated soils, and eliminate any immediate safety and environmental hazards).

- b. Within 90 days of the date of the order, conduct an investigation of the source, extent, and risk posed by the release. Collect soil samples along the product lines. Submit these samples to an offsite laboratory to be analyzed for petroleum constituents. Delineate the contamination above the groundwater table. If groundwater is encountered in the soil boring, collect groundwater samples and analyze them for petroleum constituents.
- c. Within 90 days of the date of the order, submit to DEQ an Initial Abatement/Site Characterization Report and, if applicable, a Free Product Removal Report. In these reports, include the elements set forth in the Storage Tank Program Technical Manual, as well as any additional information needed to adequately describe the site conditions and cleanup rationale.
- d. Complete any additional action requested by DEQ after review of the Site Characterization report, in accordance with the schedule set forth in DEQ's request, including:
 - i. Providing additional information, or
 - ii. Submittal of a Corrective Action Plan for cleanup.
3. Pay a civil penalty in the total sum of **Ten Thousand Dollars (\$10,000)** within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The duration of this Order shall be twelve months from the date that it is entered.

Enter this order this 9 day of September, 2019



David K. Paylor
Director, Department of Environmental Quality

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**IN RE: Zee Investments, LLC
 Main Street Truck Stop Underground Storage Tanks
 Facility ID No. 3022559**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Statement

This case concerns whether Zee Investments, LLC (“Zee”) violated certain provisions of the State Water Control Law, Va. Code §§ 62.1-44.2 et seq. and the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulations, 9 VAC 25-580-10 et seq., with respect to the underground storage tanks (“USTs”) at the Main Street Truck Stop (the “Facility”), located at 43083 John Mosby Highway in Chantilly, Virginia. Also at issue is whether injunctive relief and a civil penalty are warranted for the alleged violations.

On June 7, 2019, DEQ staff held a Special Order Proceeding (the “Proceeding”) in this matter pursuant to Va. Code §§ 2.2-4019 and 10.1-1186. The Proceeding took place in Woodbridge, Virginia, at the Department of Environmental Quality (“DEQ”) Northern Regional Office (“NRO”). Mr. Asim Ghani and Ms. Monica Ghani appeared at the Proceeding on behalf of Zee, but Zee was not represented by counsel.

Attached are a recording of the Proceeding and the exhibits numbered as they were received. The exhibits include a copy of the May 9, 2019 Notice of Special Order Proceeding and June 3, 2019 reminder letter. DEQ Exh. 17. Mr. and Ms. Ghani did not object to the introduction into the record of the DEQ Exhibit Book, containing DEQ Exhibits 1-14, or the additional exhibits introduced by DEQ during the Proceedings, labeled as DEQ Exhibits 15-17. Mr. and Ms. Ghani were provided copies of the DEQ exhibits during the Proceeding. DEQ called three witnesses during the Proceeding: Susan Tiffany, NRO UST Compliance Inspector; Randy Chapman, NRO Petroleum Program Manager; and James (Jim) Datko, NRO Enforcement Specialist.

During the Proceeding, Zee introduced to the record copies of invoices for continuous statistical leak detection installation and line testing, continuous statistical leak detection records for 2018 and 2019, statistical inventory reconciliation records for 2018 and 2019, and an unsigned deed of lease for the Facility.

II. Findings of Fact

Jurisdiction and Venue

1. Zee owns the Facility located at 43083 John Mosby Highway in Chantilly, Virginia. DEQ Exh. 15; Testimony of Susan Tiffany.

2. The Facility is located within the part of the Commonwealth administered by DEQ's NRO. Testimony of Susan Tiffany.
3. The USTs at the Facility are subject to regulation under the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation. Testimony of Susan Tiffany.

Responsible Party

1. Zee is listed as the owner of the USTs at the Facility on the Notification for USTs, form 7530-2, received by DEQ on April 19, 2012. DEQ Exh. 2; Testimony of Susan Tiffany.
2. Currently, Zee is an active limited liability company ("LLC") registered with the Virginia State Corporation Commission ("SCC"). DEQ Exh. 1; Testimony of Susan Tiffany.
3. However, Zee was previously cancelled by the SCC on November 30, 2013 for failure to pay fees and was reinstated on July 23, 2015. DEQ Exh. 1; Testimony of Susan Tiffany.
4. Some of the events at issue in the Proceeding occurred during the period of Zee's cancellation. DEQ Exh. 1; Testimony of Susan Tiffany. In some DEQ's communications during the period of cancellation, DEQ treated Mr. Ghani as the responsible party because he was the principle and registered agent of the cancelled LLC. Testimony of Susan Tiffany.
5. Pursuant to Va. Code § 13.1-1050.4, once the SCC reinstated Zee on July 23, 2015, "the existence of the LLC shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the LLC or a member, manager, or other agent after the cancellation and before the reinstatement is determined as if cancellation of the LLC's existence had never occurred."

Release Detection

March 28, 2012 Inspection

6. During an inspection of the Facility on March 28, 2012, Zee failed to have complete records of monthly tank release detection for USTs 1, 2, and 3 immediately available for inspection or readily available at an alternative site and failed to make them available upon DEQ's request. DEQ Exh. 3; Testimony of Susan Tiffany.
7. During the March 28, 2012 inspection, DEQ staff queried the automatic tank gauge, and the tank leak test histories indicated that UST 1 passed ten out of the past twelve months, UST 2 passed one of the past twelve months, and UST 3 passed four of the past twelve months. DEQ Exh. 3; Testimony of Susan Tiffany.
8. DEQ sent Zee Requests for Corrective Action on April 3, 2012 and July 27, 2012 to address deficiencies observed during the March 28, 2012 inspection. DEQ Exh. 4; Testimony of Susan Tiffany. Zee failed to provide requested passing tank leak detection records. Testimony of Susan Tiffany.

9. DEQ issued a Warning Letter on December 14, 2012 and a Notice of Violation on June 4, 2014, based on observations from the March 28, 2012 inspection. DEQ Exh. 5 and 6; Testimony of Susan Tiffany.

November 21, 2014 Inspection

10. During an inspection of the Facility on November 21, 2014, Zee was not able to provide complete passing tank leak detection records from the past year to show that the USTs 1, 2, and 3 were being tested monthly. DEQ Exh. 7; Testimony of Susan Tiffany. Zee had insufficient documentation to demonstrate compliance with the release detection requirement since many of the available records indicated invalid readings due to low liquid levels. DEQ Exh. 7 and 8.
11. The totality of the circumstances indicates that Zee failed to conduct adequate monthly tank release detection for USTs 1, 2, and 3.
12. No piping leak detection records for USTs 1, 2, and 3 were available during the November 21, 2014 inspection, and Zee did not make them available upon DEQ's request. DEQ Exh. 7; Testimony of Susan Tiffany.
13. DEQ issued a Notice of Violation on March 2, 2015, based on observations from the November 21, 2014 inspection. DEQ Exh. 8; Testimony of Susan Tiffany.

August 30, 2018 Inspection

14. During an inspection of the Facility on August 30, 2018, line tightness and automatic line leak detector test records were not available for USTs 1, 2, and 3 to demonstrate compliance with piping release detection requirements. DEQ Exh. 9; Testimony of Susan Tiffany.
15. Mr. Ghani spoke to DEQ staff by phone during the August 30, 2018 inspection, and stated that he would provide the piping release detection records by email. Testimony of Susan Tiffany. However, Mr. Ghani failed to provide those records. Testimony of Susan Tiffany.
16. DEQ sent Zee a Request for Compliance Action following the August 30, 2018 inspection, requesting copies of line tightness and automatic line leak detector records by December 16, 2018. DEQ Exh. 10; Testimony of Susan Tiffany. Zee did not provide the requested records. Testimony of Susan Tiffany.
17. The totality of the circumstances indicates that Zee failed to conduct piping release detection for USTs 1, 2, and 3.

Applicable Tank and Piping Release Detection Requirements

18. 9 VAC 25-580-130 requires owners and operators of UST systems to provide a method, or combination of methods, of release detection that meets the requirements of that section, including being able to detect a release from any portion of the tank and

connected underground piping that routinely contains product; that is installed and calibrated in accordance with the manufacturer's instructions and that meets the performance requirements in 9 VAC 25-580-160 or 9 VAC 25-580-170.

19. 9 VAC 25-580-140(1) requires tanks to be monitored at least every 30 days for releases.
20. 9 VAC 25-580-140(2) requires underground piping that conveys regulated substances under pressure to have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 VAC 25-580-170.
21. 9 VAC 25-580-170 requires an annual test of the operation of the leak detector to be conducted.
22. 9 VAC 25-580-180 requires UST system owners and operators to maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.

Documents Introduced by Zee

23. During the Proceeding, Zee introduced a number of records related to release detection. However, none of the records submitted demonstrated that violations alleged in the Notice of Special Order Proceeding did not occur.
24. Mr. Ghani provided proof of installation of continuous statistical leak detection ("CSLD") in November 2015, and he provided CSLD results for 2018 and 2019. These records indicate that tank release detection has been completed since November 2015. However, Mr. Ghani did not provide documentation of tank release detection for 2012 and 2014, when DEQ's inspections indicated that tank release detection was not completed.
25. Mr. Ghani also provided statistical inventory reconciliation ("SIR") records for 2018 and 2019. However, the records provided did not document completion of the final steps for SIR and did not include paperwork from a SIR vendor indicating whether the lines passed or failed. Therefore, the SIR records do not demonstrate compliance with release detection requirements.
26. Finally, Mr. Ghani provided an invoice for line tightness testing, which showed Zee had the lines tested on 8/20/18. However, Zee did not provide the line tightness test results from that date. Additionally, the invoice includes a note that the pressure drop line leak detectors are not holding, and Zee needs to make repairs and retest. Therefore, the invoice does not fully demonstrate compliance with piping release detection requirements.

Petroleum Release

27. On January 16, 2019, a third party, Mark Steele of Kleinfelder East, Inc. reported a petroleum release at the Facility. DEQ Exh. 11; Testimony of Randy Chapman.
28. Zee did not report the release to DEQ. Testimony of Randy Chapman. Mr. Ghani acknowledged that he did not report but stated that he was not aware of the requirement to report. Testimony of Asim Ghani. However, ignorance of the regulatory requirement does not excuse the failure to report.
29. Mr. Steele reported that “A Phase II Environmental Site Assessment (ESA), consisting of six soil borings and sampling an on-site potable supply well, for a lease transaction was completed on December 18, 2018 and January 2, 2019. Fuel oxygenates (MTBE, TBA, and DIPE) were detected in the potable water sample and laboratory analytical report” DEQ Exh. 11; Testimony of Randy Chapman. Mr. Steele’s pollution report constituted confirmation of a release of regulated substances and contamination of a drinking water source. Testimony of Randy Chapman.
30. On February 7, 2019, DEQ sent Zee a letter regarding the confirmed petroleum release at the Facility, which was identified as Pollution Complaint (“PC”) #2019-3132. DEQ Exh. 12; Testimony of Randy Chapman. The letter listed steps required for corrective action including submitting an Initial Abatement Measures Report by March 7, 2019 and submitting a Site Characterization Report by April 7, 2019. DEQ Exh. 12; Testimony of Randy Chapman.
31. Zee failed to submit the Initial Abatement Measures Report by March 7, 2019 or the Site Characterization Report by April 7, 2019. Testimony of Randy Chapman.
32. DEQ’s February 7, 2019 letter asked Zee to advise DEQ if Zee disputed any of the observations recited in the letter. DEQ Exh. 12; Testimony of Randy Chapman. Zee did not notify DEQ that it disputed any observations related to the release. Testimony of Randy Chapman.
33. On March 11, 2019, DEQ sent Zee a letter reminding Zee of the requirements to submit an initial abatement measures report and a site characterization report. DEQ Exh. 13; Testimony of Randy Chapman. The March 11, 2019 letter further stated that DEQ had not received the reports or proposals for completing them and requested an update on the status of the required reports by March 18, 2019. DEQ Exh. 13; Testimony of Randy Chapman.
34. Zee failed to submit an update on the status of the required reports by March 18, 2019. Testimony of Randy Chapman.
35. As of the date of the Proceeding, Zee has failed to submit an Initial Abatement Measures Report or a Site Characterization Report to DEQ. Testimony of Randy Chapman.
36. Mr. Ghani stated that there was some confusion about who would be completing the investigation and cleanup work. Testimony of Asim Ghani. However, as the owner of

the tanks, Zee was the party required to submit the initial abatement measures report and site characterization report.

Applicable Requirements for Addressing Petroleum Releases

37. 9 VAC 25-580-190 states, "Owners and operators of UST systems must report to the board within 24 hours and follow the procedures in 9 VAC 25-580-210 for any of the following conditions: 1. The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water)."
38. 9 VAC 25-580-210 states, "Unless corrective action is initiated in accordance with Part VI (9VAC25-580-230 et seq.) of this chapter, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 9VAC25-580-190 within seven days, or another reasonable time period specified by the board upon written request made and approved within seven days after reporting of the suspected release."
39. 9 VAC 25-580-250 states:
 - A. Unless directed to do otherwise by the board, owners and operators must perform the following abatement measures:
 1. Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
 2. Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;
 3. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
 4. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;
 5. Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by subdivision 2 of 9VAC25-580-210 or the closure site assessment of subsection A of 9VAC25-580-330. In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release. Samples shall

be tested according to established EPA analytical methods or methods approved the board; and

6. Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with 9VAC25-580-270.

- B. Within 20 days after release confirmation, or within another reasonable period of time determined by the board upon written request made and approved within 20 days after release confirmation, owners and operators must submit a report to the board summarizing the initial abatement steps taken under subsection A of this section and any resulting information or data.

Calculation of Civil Penalty

40. Jim Datko explained how the penalty was calculated for Zee, using the UST Civil Charge/Civil Penalty Worksheet (the "Worksheet") included in DEQ's Civil Enforcement Manual. Testimony of Jim Datko; DEQ Exh. 14. This worksheet is used throughout the Commonwealth to calculate civil charges and civil penalties for UST violations. Testimony of Jim Datko; DEQ Exh. 14.
41. A total civil penalty of \$31,500 was calculated for Zee on the Worksheet. Testimony of Jim Datko; DEQ Exh. 14.
42. One occurrence was assessed on line 1(a) of the Worksheet for failure to report a release. Testimony of Jim Datko; DEQ Exh. 14. Although DEQ staff recommended a marginal potential for harm, testimony of Jim Datko; DEQ Exh. 14, this violation was assessed as serious because the release impacted a potable water supply. Additionally, Zee could have known of the release and reported it sooner if Zee had conducted release detection testing as required.
43. One occurrence was assessed on line 1(c) of the Worksheet for failure to investigate, abate, or remediate a release. Testimony of Jim Datko; DEQ Exh. 14. The potential for harm was assessed as serious because the release impacted a drinking water source, and Zee failed to remediate the release in a timely manner. Testimony of Jim Datko; DEQ Exh. 14.
44. Three occurrences were assessed for tank system operated improperly to address failure to conduct tank and piping release detection for the three tanks at the facility. Testimony of Jim Datko; DEQ Exh. 14. The potential for harm was assessed as moderate because there were multiple events when Zee failed to operate the tanks properly with respect to release detection. Testimony of Jim Datko; DEQ Exh. 14.
45. One occurrence was assessed for records not available. Testimony of Jim Datko; DEQ Exh. 14. The potential for harm was assessed as moderate because there were multiple events when Zee failed to provide records at DEQ's request. Testimony of Jim Datko; DEQ Exh. 14.
46. Although DEQ staff recommended a moderate potential for harm, testimony of Jim Datko; DEQ Exh. 14, the culpability was assessed as serious because Zee had full control

over the actions needed to prevent the violations from happening, and DEQ notified Zee of the issues numerous times.

47. Penalties for Zee's violations have not been assessed previously in any order or case decision. Testimony of Jim Datko.
48. Penalties in orders issued under Va. Code § 10.1-1186 are limited to \$10,000. Va. Code §§ 10.1-1182, 10.1-1186.
49. A civil penalty of \$10,000 is appropriate to address Zee's violations in this case.

III. Conclusions of Law

1. Zee is a "person" under Va. Code § 62.1-44.34:8 and 9 VAC 25-31-10.
2. DEQ's NRO is an appropriate venue for the Proceeding.
3. Zee failed to make complete records of monthly tank release detection for USTs 1, 2, and 3 immediately available for inspection or readily available at an alternative site and failed to make them available upon DEQ's request, in violation of 9 VAC 25-580-180 and 9 VAC 25-580-120.
4. Zee failed to conduct adequate monthly tank release detection for USTs 1, 2, and 3, in violation of 9 VAC 25-580-130 and 9 VAC 25-580-140.
5. Zee failed to make records of release detection for the piping associated with USTs 1, 2, and 3 immediately available for inspection or readily available at an alternative site and failed to make them available upon DEQ's request, in violation of 9 VAC 25-580-180 and 9 VAC 25-580-120.
6. Zee failed to conduct piping release detection for the piping associated with USTs 1, 2, and 3, in violation of 9 VAC 25-580-130, 9 VAC 25-580-140, and 9 VAC 25-580-170.
7. Zee failed to notify DEQ of the petroleum release at the Facility, identified as PC #2019-3132, in violation of 9 VAC 25-580-190.
8. Zee failed to submit any documentation of release investigation, reporting, confirmation steps, abatement, or mitigation, related to the petroleum release at the Facility, identified as PC #2019-3132, in violation of 9 VAC 25-580-210 and 9 VAC 25-580-250.

IV. Relief

The above findings of fact and conclusions of law support issuance of a Special Order pursuant to Va. Code § 10.1-1186 to compel Zee to comply with the State Water Control Law and the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulations. Specifically, the Special Order will require that Zee:

1. Within 90 days of the date of the Special Order, submit documentation of piping release detection satisfying the requirements of 9 VAC 25-580-140 and 9 VAC 25-580-170.
2. Conduct release investigation, reporting, confirmation steps, and mitigation documentation for PC# 2019-3132 as follows:
 - a. Within 90 days of the date of the Special Order, take any necessary initial abatement measures to mitigate the effects of the release (eliminate the source, remove free-phase petroleum contamination, remove limited quantities of petroleum saturated soils, and eliminate any immediate safety and environmental hazards).
 - b. Within 90 days of the date of the Special Order, conduct an investigation of the source, extent, and risk posed by the release. Collect soil samples along the product lines. Submit these samples to an offsite laboratory to be analyzed for petroleum constituents. Delineate the contamination above the groundwater table. If groundwater is encountered in the soil boring, collect groundwater samples and analyze them for petroleum constituents.
 - c. Within 90 days of the date of the Special Order, submit to DEQ an Initial Abatement/Site Characterization Report and, if applicable, a Free Product Removal Report. In these reports, include the elements set forth in the Storage Tank Program Technical Manual, as well as any additional information needed to adequately describe the site conditions and cleanup rationale.
 - d. Complete any additional action requested by DEQ after review of the Site Characterization report, in accordance with the schedule set forth in DEQ's request, including:
 - i. Providing additional information, or
 - ii. Submittal of a Corrective Action Plan for cleanup.
3. Within 30 days of the date of the order, pay a penalty of \$10,000.